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Office of Management and Budget (OMB) Guidance in 2 CFR part 200, with the following additions. Thus, this part gives regulatory effect to the OMB guidance and supplements the guidance as needed for the Department.

(b) The additions include: Expanding the definition of non-Federal entity for DOE to include For-profit entities; adding back additional coverage from 10 CFR part 600 required by DOE statute; adding back coverage specific for For-Profit entities which existed in 10 CFR part 600 which still applies.

§910.122 Applicability.

(a) For DOE, unless otherwise noted in Part 910, the definition of Non-Federal entity found in 2 CFR 200.69 is expanded to include for-profit organizations in addition to states, local governments, Indian tribes, institutions of higher education (IHE), and nonprofit organizations.

(b) A for-profit organization is defined as one that distributes any profit not reinvested into the business as profit or dividends to its employees or shareholders.

§910.124 Eligibility.

(a) *Purpose and scope.* This section implements section 2306 of the Energy Policy Act of 1992, 42 U.S.C. 13525, and sets forth a general statement of policy, including procedures and interpretations, for the guidance of implementing DOE officials in making mandatory pre-award determinations of eligibility for financial assistance under Titles XX through XXIII of that Act.

(b) *Definitions.* The definitions in Subpart A of 2 CFR part 200, including the definition of the term “Federal financial assistance,” are applicable to this section. In addition, as used in this section:

Act means the Energy Policy Act of 1992.

Company means any business entity other than an organization of the type described in section 501(c) (3) of the Internal Revenue Code of 1954 (26 U.S.C. 501(c)(3)).

Covered program means a program under Titles XX through XXIII of the Act. (A list of covered programs, updated periodically as appropriate, is

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maintained and published by the Department of Energy.)

Parent company means a company that:

(1) Exercises ultimate ownership of the applicant company either directly, by ownership of a majority of that company’s voting securities, or indirectly, by control over a majority of that company’s voting securities through one or more intermediate subsidiary companies or otherwise, and

(2) Is not itself subject to the ultimate ownership control of another company.

United States means the several States, the District of Columbia, and all commonwealths, territories, and possessions of the United States.

United States-owned company means:

(1) A company that has majority ownership by individuals who are citizens of the United States, or

(2) A company organized under the laws of a State that either has no parent company or has a parent company organized under the laws of a State.

Voting security has the meaning given the term in the Public Utility Holding Company Act (15 U.S.C. 15b(17)).

(c) *What must DOE determine.* A company shall be eligible to receive an award of financial assistance under a covered program only if DOE finds that—

(1) Consistent with §910.124(d), the company’s participation in a covered program would be in the economic interest of the United States; and

(2) The company is either—

(i) A United States-owned company; or

(ii) Incorporated or organized under the laws of any State and has a parent company which is incorporated or organized under the laws of a country which—

(A) Affords to the United States-owned companies opportunities, comparable to those afforded to any other company, to participate in any joint venture similar to those authorized under the Act;

(B) Affords to United States-owned companies local investment opportunities comparable to those afforded to any other company; and

(C) Affords adequate and effective protection for the intellectual property

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rights of United States-owned companies.

(d) *Determining the economic interest of the United States.* In determining whether participation of an applicant company in a covered program would be in the economic interest of the United States under §910.124(c)(1), DOE may consider any evidence showing that a financial assistance award would be in the economic interest of the United States including, but not limited to—

(1) Investments by the applicant company and its affiliates in the United States in research, development, and manufacturing (including, for example, the manufacture of major components or subassemblies in the United States);

(2) Significant contributions to employment in the United States by the applicant company and its affiliates; and

(3) An agreement by the applicant company, with respect to any technology arising from the financial assistance being sought—

(i) To promote the manufacture within the United States of products resulting from that technology (taking into account the goals of promoting the competitiveness of United States industry); and

(ii) To procure parts and materials from competitive suppliers.

(e) Information an applicant must submit.

(1) Any applicant for Federal financial assistance under a covered program shall submit with the application for Federal financial assistance, or at such later time as may be specified by DOE, evidence for DOE to consider in making findings required under §910.124(c)(1) and findings concerning ownership status under §910.124(c)(2).

(2) If an applicant for Federal financial assistance is submitting evidence relating to future undertakings, such as an agreement under §910.124(d)(3) to promote manufacture in the United States of products resulting from a technology developed with financial assistance or to procure parts and materials from competitive suppliers, the applicant shall submit a representation affirming acceptance of these undertakings. The applicant should also

briefly describe its plans, if any, for any manufacturing of products arising from the program-supported research and development, including the location where such manufacturing is expected to occur.

(3) If an applicant for Federal financial assistance is claiming to be a United States-owned company, the applicant must submit a representation affirming that it falls within the definition of that term provided in §910.124(b).

(4) DOE may require submission of additional information deemed necessary to make any portion of the determination required by §910.124(b) 2.

(f) Other information DOE may consider.

In making the determination under §910.124(c)(2)(ii), DOE may—

(1) Consider information on the relevant international and domestic law obligations of the country of incorporation of the parent company of an applicant;

(2) Consider information relating to the policies and practices of the country of incorporation of the parent company of an applicant with respect to:

(i) The eligibility criteria for, and the experience of United States-owned company participation in, energy-related research and development programs;

(ii) Local investment opportunities afforded to United States-owned companies; and

(iii) Protection of intellectual property rights of United States-owned companies;

(3) Seek and consider advice from other federal agencies, as appropriate; and

(4) Consider any publicly available information in addition to the information provided by the applicant.

§910.126 Competition.

(a) *General.* DOE shall solicit applications for Federal financial assistance in a manner which provides for the maximum amount of competition feasible.

(b) *Restricted eligibility.* If DOE restricts eligibility, an explanation of why the restriction of eligibility is considered necessary shall be included in the notice of funding opportunity or,